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No. _____

Supreme Court, U.S.
FILED
MAY 11 1987
JOSEPH F. SPANIOL, JR.
CLERK

IN THE
Supreme Court of the United States

October Term, 1987

DOROTHY CAMER,

Petitioner,

v.

SEATTLE POST-INTELLIGENCER
and SUSAN GOLDBERG,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO DIVISION I OF THE COURT OF APPEALS OF THE STATE OF WASHINGTON

BRIEF OF RESPONDENTS IN OPPOSITION TO PETITION FOR CERTIORARI

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FRAYN PRINTING COMPANY SEATTLE, WASHINGTON

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ISSUES PRESENTED

1. Under Washington law, was Plaintiff's defamation action properly dismissed, where Plaintiff failed to show by clear and convincing evidence that statements characterizing her various legal actions against the public school district as "frivolous" or "nuisance" suits (a) were defamatory, (b) were false, (c) were unprivileged communications, (d) were published with the requisite degree of fault, and (e) caused damage to Plaintiff?

2. Under Washington law, could certain statements in the Article such as those concerning "constitutional crazies," which were not directed at plaintiff personally, be read by ordinary readers to imply that plaintiff is in fact mentally incompetent?

3. Are statements criticizing "constant litigants" for repeatedly filing lawsuits against governmental entities statements of opinion protected by the Constitutions of the United States and the State of Washington?

4. Plaintiff involved herself in numerous legal actions, filed administrative complaints on public school issues, repeatedly spoke out on such issues, and sought publicity for her lawsuits and positions. Is she a "public figure" for the purpose of discussing her legal actions and administrative complaints?

5. Has plaintiff submitted clear and convincing evidence that the subject Article was published with "actual malice"?

PARTIES TO THE PROCEEDINGS

Dorothy Camer and Margaret Coughlin were appellants below. Only Ms. Camer is a Petitioner before this Court.

Seattle Post-Intelligencer, a division of The Hearst Corporation, and Susan Goldberg were the respondents below and they remain so before this Court. As required by Sup. Ct. R. 28.1, a list of the affiliates of Seattle Post-Intelligencer, all subsidiaries or divisions of The Hearst Corporation, is at Appendix C.

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JURISDICTION

The Respondents Seattle Post-Intelligencer and Susan Goldberg respectfully request that this Court deny the petition for writ of certiorari seeking review of the opinion of Division One of the Court of Appeals of the State of Washington (the "Petition").

That opinion, entitled Camer v. Seattle Post-Intelligencer, is reported at 45 Wash. App. 29, 723 P.2d 1195 (1986). For the Court's convenience, we will cite to the opinion in the official state reporter, as well as to the pages in the Appendix to the Petition. (cited hereinafter as "A__").

Because the decision below rests on independent and adequate state grounds, this Court is without jurisdiction to hear this case. Reversal of the court of appeals on every question raised by Petitioner would not result in a different disposition of this case.

Petitioner brought a defamation action under Washington State law. To prevail, Petitioner had to establish a prima facie case as to each of four elements of defamation: falsity, unprivileged communication, fault, and damages. The court below concluded that

Petitioner had failed to establish any of the four elements. The court's conclusion, as it relates to the elements of falsity and damages, is based exclusively on Washington state law. Therefore, even with reversal on the federal issues raised by the Petition, Petitioner's defamation action would still be lacking two elements required under Washington law and, thus, would still be properly dismissed.

The Washington Supreme Court denied review of the Court of Appeals' decision on January 6, 1987. Appendix D. It is from that date that the 90-day period of 28 U.S.C. § 2101(c) began to run. Sup. Ct. R. 20.4.

STATEMENT OF THE CASE

This defamation action arises from an article written and published by the Respondents Susan Goldberg and Seattle Post-Intelligencer (the "Defendants") in 1982 (the "Article"). The full text of the Article is set forth in Appendix A to this Brief. Defendants incorporate by reference the facts as stated in the opinion below. Camer v. Seattle Post-Intelligencer, 45 Wash. App. 29, 31-35; A1-A11.

Nevertheless, Petitioner Dorothy Camer's (the "Plaintiff") Statement of Facts contains inaccuracies and omissions that require correction. Petition at 3.

Plaintiff would have this Court believe that, at the time the Article was published, she had been involved in only three cases concerning the quality of public schools. Petition at 6.

While Plaintiff had filed only three lawsuits against the Seattle School District, it was undisputed at the summary judgment hearing that Plaintiff had also attempted to intervene in three other suits "already pending between the District and the State. In addition, [Plaintiff] Camer filed four complaints against school officials with the Office for Civil Rights of the United States Department of Education." Camer, 45 Wash. App. at 33; A6-A7.

Plaintiff also declares that Defendant Seattle Post-Intelligencer (the "P-I") had stated its adherence "to the Associated Press Style Manual and the Washington State Bench-Bar-Press Guidelines as standards," Petition at 14, and argues that those publications, therefore, establish a standard of care. Petition at 25, 28. While the alleged "binding effect" of those

publications is discussed below, see infra at 27-28, Plaintiff misrepresents the P-I's answer to an interrogatory, requesting the identity of any "published legal or ethical guidelines or standards used or recommended for use by P-I employees." Plaintiff's First Interrogatories to Defendant Seattle Post-Intelligencer and Answers Thereto, at 2. Appendix B. The P-I did state that, with the recommendation of its management, certain listed publications were used by its employees. The answer did not indicate that the P-I regarded any of those publications to be either legal or ethical standards.

Finally, Plaintiff incorrectly states that the Washington Supreme Court affirmed the Court of Appeals' decision. Petition at 2. That court denied her petition for review of the appellate court's opinion. Order Granting Motion

for Extension of Time to File Petition for Review and Denying Petition for Review on the Merits (entered January 6, 1987). Appendix D.

ARGUMENT

I. Plaintiff's petition suffers from two substantial defects.

A. The appellate court's decision is based on independent and adequate state grounds.

Because the decision of the court below is supported by an independent and adequate state ground, this Court lacks jurisdiction to review that decision. See, e.g., 16 Wright, Miller, Cooper & Gressman, Federal Practice and Procedure: Jurisdiction § 4019. Where there exists state grounds independent of the federal questions raised, this Court does not accept review "largely for the reason that decisions on the federal questions . . . would amount to

no more than advisory opinions." Uhler v. AFL-CIO, 468 U.S. 1310, 1311 (1984) (Rehnquist, J., in Chambers) (citations omitted).

Plaintiff, here, seeks review of the lower court's conclusions that she was a limited public figure and that the allegedly defamatory statements were privileged. Plaintiff's third issue on appeal is so novel that it does not appear to fit within any analysis of defamation. That issue is addressed infra at 29-32. Plaintiff, however, failed to convince the court below that the allegedly defamatory statements were false, Camer, 45 Wash. App. at 38-39; A18-A20, or that Plaintiff suffered any damage as a result of those statements having been made. Id. at 43-44; A30-A32. Hence, even if she could prevail on all the federal questions she does raise, Plaintiff still could not

show that review by this Court would change the result below.

B. Plaintiff has not offered this Court any reason why this decision from an intermediate state Court of Appeals should be granted a writ of certiorari.

This petition for certiorari is taken from a decision of an intermediate state court of appeals, after the highest state court declined to review the decision. See Appendix D. Plaintiff has offered this Court no compelling reason for expending its scarce resources on this particular decision.

Furthermore, Plaintiff has failed to demonstrate that the decision conflicts with any opinion of this Court or of any federal court of appeals. Sup. Ct. R. 17.1. Nor does Plaintiff raise any "important question of federal law which has not been but should be, settled by this Court." Sup. Ct. R. 17.1(c).

The three issues which Plaintiff would have this Court consider include: (1) whether the trial court properly concluded that Plaintiff was a limited public figure for purposes of an article on frivolous lawsuits against public agencies, by virtue of her extensive litigation of public school issues; (2) whether Defendants' alleged deviation (never found by the trial court) from local voluntary guidelines for news publishers constitutes "actual malice" for purposes of Plaintiff's defamation claim; and (3) whether reporting the opinions of government attorneys concerning citizen lawsuits chilled Plaintiff's exercise of her constitutional right to petition government through the courts.

Plaintiff, however, fails to show where the court below has deviated from this Court's rulings on First Amendment

law. Instead it is Plaintiff's own understanding of the First Amendment that makes a radical departure from traditional opinions concerning free speech rights.

II. Plaintiff has failed to prove any of the substantive elements of defamation.

Plaintiff has failed to establish any of the elements of a defamation claim. Under Washington State law,

> [A] defamation plaintiff resisting a defense motion for summary judgment by a media defendant must establish a prima facie case as to each element of defamation, i.e., falsity, an unprivileged communication, fault, and damages by evidence of convincing clarity. In addition, the plaintiff has the burden of proving that the communication was made of and concerning him or her.

Camer, 45 Wash. App. at 36; A13-A14 (citations omitted). The court below held that Plaintiff had failed to satisfy any of those elements.

A. The lower court properly held that only one statement was even arguably "of and concerning" plaintiff.

Plaintiff apparently continues to contend that the entire Article is of and concerning the Plaintiff. Petition at 23. This is too narrow a characterization of the Article's subject. After carefully reviewing a number of statements Plaintiff had claimed were false and defamatory, the appellate court only concluded that there remained "an issue of fact as to whether [the Plaintiff is] implicated in the class of 'nuisance suers.'" Camer, 45 Wash. App. at 38; A18. The appellate court clearly explained why other statements in the Article, including the reference to "constitutional crazies" did not apply to Plaintiff. 45 Wash. App. at 36-38; A15-A18. Plaintiff has not explained why every statement in the Article

concerning the various types of litigants should be construed as a statement about her.

Plaintiff next argues that the appellate court's opinion is inconsistent with established Washington law. Petition at 23 (citing Sims v. KIRO, Inc., 20 Wash. App. 229, 580 P.2d 642 (1978), cert. denied, 441 U.S. 945 (1979); Benjamin v. Cowles Publishing Co., 37 Wash. App. 916, 684 P.2d 739 (1984); McNair v. Hearst Corp., 794 F.2d 1309 (9th Cir. 1974)).

Plaintiff never explains why this Court should concern itself with questions of state law. Furthermore, only one of the above cited cases, Sims v. KIRO, Inc., 20 Wash. App. 229, even considered the question of what constitutes a statement "of and concerning" the Plaintiff. In Sims, the plaintiff alleged defamation because his

merchandise, as well as that of others, had been shown in a television broadcast largely critical of the sale of bicentennial memorabilia. In concluding the plaintiff had failed to show he was the subject of the critical statements, the court reasoned that an individual's mere membership in the group being discussed provides insufficient basis for asserting that the individual is the subject of the allegedly defamatory remarks. Sims, 20 Wash. App. at 229. Here, Plaintiff was described as being a member of one of a number sub-groups of constant litigants discussed in the Article and is, thus, even less the subject of the alleged defamatory remark than was the Sims plaintiff. Appendix A, ¶¶ 16-20.

B. The lower Court properly concluded that plaintiff had failed to show that any false statements had been made about her.

While the statements linking Plaintiff with the group of "nuisance suers" were arguably "of and concerning" her, Plaintiff failed to carry her burden of showing with convincing clarity that those statements were false. 45 Wash. App. at 38; A18. It was an impossible burden. The contention that Plaintiff has filed "frivolous suits" could not be objectively verified as "true" or "false."

A determination of whether a claim is "frivolous" requires (1) an assessment of the legal principles and precedents that apply to the claim, and (2) a weighing of the importance of the rights asserted by the plaintiff. Because reasonable minds can differ on either of those basic considerations, they can

also differ on whether a particular claim, dismissed by a court or other tribunal, was frivolous. Because reasonable minds, presented with the same data, could differ, the verifiability required for a "true or false" determination was absent.

C. Plaintiff has failed to demonstrate why the opinions stated in the article should not be privileged.

The appellate court held that the Article's characterization of Plaintiff's suits as "frivolous and nuisances" was "undoubtedly opinion and therefore not actionable." Camer, 45 Wash. App. at 41; A25. Plaintiff appears to offer three arguments for reversing that holding: (1) the First Amendment affords less protection to the reporting of an interviewee's opinion than to the reporting of one's own opinion, Petition at 23-24; (2) the

First Amendment affords less protection to statements not expressed in "heated debate or even in court hearings," Petition at 24-25; (3) the Defendants have a duty to tell both ides of the story, Petition at 25-26.

Plaintiff can cite no authority to support her first argument. None of the authorities she does cite stands for the proposition that a report of another's opinion is accorded less protection than a statement of one's own opinion. For example, Spelson v. CBS, Inc., 581 F. Supp 1195 (N.D. Ill. 1984), aff'd, 757 F.2d 1291 (7th Cir. 1985) (Petition at 23), involved facts analogous to those before this Court. A chiropractor sued a television network for defamation in connection with a series of broadcasts on individuals, including the plaintiff, engaged in "cancer quackery."

The court below reviewed several of the statements, many offered by interviewees, concerning Spelson's cancer treatments. Camer, 45 Wash. App. at 40-41; A23-A24 (citing Spelson, 581 F. Supp. at 1203-05). The Spelson court concluded that the statements were privileged as opinion. The court further observed that the standard for liability remained the same regardless of whether the statement was that of the reporter or the interviewer. Spelson, 581 F. Supp. at 1203-04 n.7. Moreover, the Spelson court never predicated that conclusion on the scope or intensity of the reporter's investigation.

Plaintiff's citations to other purported authority for her proposition are equally capricious. More importantly, Plaintiff's argument that stating another's opinion is less privileged than stating one's own, is fundamentally

absurd. The First Amendment symbolizes and protects our "profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open." New York Times Co. v. Sullivan, 376 U.S. 254, 270 (1964). Presently, media technologies and institutions can provide rapid transmittal of one's ideas on any public issue. Nevertheless, public debate could hardly be robust if, as Plaintiff would have it, one's ideas could not be repeated by another and still remain privileged. For all but a few who have special access to the various media, the privilege to express oneself would be reduced to a futile and meaningless exercise. One could seek to affect only the smallest of the various local, state, and national communities in which one lives.

Finally, to the extent she concedes the privilege exists at all, Plaintiff appears to restrict the privilege to opinions appearing in editorial columns. Petition at 24. Plaintiff confuses the indicia of opinion with opinion itself. That a statement appears in an editorial column is merely one factor suggesting that the statement is an opinion. The court below, however, pointed to several other indicia to show that the statements at issue were opinions. Camer, 45 Wn. App. at 40; A21-A22.

After considering the entire article, the verifiability of the statement, and the likelihood that an ordinary individual would perceive the statement as an expression of opinion, Camer, 45 Wash. App. at 39-40; A21, the court below correctly held that the statements that Plaintiff's suits were "frivolous"

and constituted a "nuisance" were "undoubtedly opinion." Id. at 41; A25.

Plaintiff's second argument, that those statements could not be privileged as opinion because they were not expressed "in heated debate or even in court hearings," implies a distinction without a difference. Petition at 25 (quoting Information Control Corp. v. Genesis One Computer Corp., 611 F.2d 781, (9th Cir. 1980)). Speech concerning matters of public importance is not accorded less protection simply because it does not occur in "heated debate."

Again, an examination of Plaintiff's own authority for her statement reveals its absurdity. Plaintiff fails to acknowledge that the rest of the sentence from which she quotes identifies a number of contexts, including "public debate, heated labor dispute or other circumstances" where "even apparent

statements of fact may assume the character of opinion . . ." Information Control, 611 F.2d at 784 (emphasis added).

The controversy over "nuisance" or "frivolous" suits is the subject of considerable public debate. As the court below stated, "given the public's concern both with court congestion and the use of taxpayer funds, the [A]rticle raises issues which result in heated and often emotional discussions." Camer, 45 Wash. App. at 41; A25. Plaintiff's own cited authority, as well as sound public policy, militate against her argument here.

Plaintiff's third argument, that defendants must present both sides of the issue, is equally without merit. Here Plaintiff's contention ignores both the inherently subjective nature of opinion and the purpose for protecting

opinions as privileged speech--namely "to assure unfettered interchange of ideas for the bringing about of political and social changes desired by the people." New York Times, 376 U.S. at 269.

Given these fundamental principles of free speech, it is understandable that Plaintiff can find no authority to cite for her proposition that a publication must include all opinions in order to be published. Plaintiff's argument is also untenable in light of her refusal to talk to the P-I's reporter prior to the publication of the Article. Camer, 45 Wash. App. at 34-35; A10-A11. Denied the opportunity to present anything of Plaintiff's "side" of the story, the reporter made clear in the Article that she had not been able to elicit comments from the Plaintiff, thereby giving notice that the Article

was unavoidably one-sided. Appendix A, ¶ 23.

D. Plaintiff failed to establish defendant's fault under any standard of care.

Even though the appellate court expressly stated that Plaintiff had produced "insufficient evidence here to establish even negligence," 45 Wash. App at 43; A29, Plaintiff devotes the bulk of her argument to her status as a "limited public figure," and to the "Bench-Bar-Press Principles and Guidelines" as a standard for "actual malice." Petition at 16-22, 25-29.

Notwithstanding (1) her involvement in ten legal actions with the school district within three years, (2) her having "called both print and television reporters to discuss her cases," 45 Wash. App. at 33; A7, and (3) her having even issued a press release at

one point, id. at 43; A28-A29; Camer Dep., CP Subfile 40, Attch. A at 69, Plaintiff denies that she has thrust herself "into the area of interest in the article." Petition at 19.

Defendant concedes Plaintiff's statement that she has not sought "to resolve the issue of frivolous cases or clogged courts." Petition at 17. Nevertheless, simply because Plaintiff has not spoken on the subject of frivolous suits does not insulate from public scrutiny her self-described method of "petition[ing] the government by filing court actions in the [area of her] interest." Petition at 20. As the appellate court pointed out, there "is no clear boundary between the subjects of [Plaintiff's] lawsuits and the subject of the [A]rticle." Camer, 45 Wash. App. at 42-43; A28. Plaintiff distinguished herself from other

concerned citizens by repeatedly taking legal action to attempt to resolve public issues. In considering the prevalence of citizen lawsuits and their effect on government agencies, the methods of "constant litigants" such as Plaintiff are a subject of public interest. The court also based its public figure determination on activities by Plaintiff which extended beyond the scope of litigation itself. Id. at 43; A28-A29; see also, id. at 33; A7.

Plaintiff argues that local Bench-Bar-Press guidelines, which she admits "are voluntary," should serve as a standard for "actual malice." Petition at 28. Plaintiff cites no authority for her assertion. A review of quotations from the publication indicates how difficult it would be to employ such inspirational maxims and general observations as legal standards. Petition at 26-28,

For a statement to have been made with "actual malice," it must be made "with knowledge that it was false or with reckless disregard of whether it was false or not." New York Times, 376 U.S. at 279-80. Plaintiff does not attempt to explain how the "Guidelines for Reporting of Civil Proceedings" can possibly aid the determination of whether a defendant published a statement with reckless disregard for its truth or falsity. Petition at 27-28. Instead, she alleges the Article was "one-sided." A lack of objectivity does not establish actual malice. Brown v. Herald Co., 698 F.2d 949, 951 (8th Cir. 1983) (per curiam); Cohn v. National Broadcasting Co., 67 A.D.2d 140, 414 N.Y.S.2d 906, 909 (1st Dept. 1979); aff'd, 50 N.Y.2d 885, 408 N.E.2d 672, 430 N.Y.S.2d 265, cert. denied, 449 U.S. 1022 (1980).

Plaintiff does not deny that three days before the Article's publication date, Defendant Goldberg called Plaintiff to solicit her side of the story. Camer, 45 Wash. App. at 34-35; A10-A11. When given this opportunity, however, Plaintiff elected not to give "her side" of the story, and she can hardly blame Defendants now for printing a "one-sided" story. Id. The Article acknowledged that Defendant had not been able to talk with Plaintiff, thus reminding the reader that her point of view was not represented. Appendix A, ¶ 23. See also, Camer, 45 Wash. App. at 43; A29.

The appellate court's discussion of whether Plaintiff was a public figure and whether there was evidence of actual malice was unnecessary to its resolution of the case. In the absence of a false and unprivileged statement regarding the

Plaintiff, the question of fault need not be addressed. This court's rejection of the lower court's position on those issues would not require reversal of the judgment below.

E. Plaintiff failed to establish any damages.

Plaintiff urges this Court to hold that the appellate court's opinion will inhibit the free exercise of the First Amendment right to petition the government, at least in Washington State. Petition at 29. It is unclear whether this argument is advanced (1) to support an independent cause of action, different from defamation; (2) to establish liability for defamation in the absence of false statements of fact; or (3) to support a novel form of damages for defamation.

The argument cannot support a new and independent cause of action, because

only a claim for defamation has been pleaded.

Nor can plaintiff's assertion serv as a substitute for the essential elements of a defamation claim: falsity, an unprivileged communication, fault, and damages. Mark v. Seattle Times Co., 96 Wash. 2d 473, 486, 635 P.2d 1081 (1981), cert. denied, 457 U.S. 1124 (1982). Plaintiff may mean suggest that communication which would otherwise be constitutionally privileg under New York Times Co. v. Sullivan and its progeny, is not so privileged its subject matter involves the plaintiff's exercise of First Amendment rights. There is no authority which suggests that a lower threshold for "actual malice" should apply to public tions regarding a plaintiff's public speech. Indeed, the more a plaintiff does to speak out publicly on

controversial issues, the more likely it is that he or she will be held a public figure.

Plaintiff has cited no authority holding that a chilling effect on her exercise of freedom of speech is a form of damages for defamation. Moreover, the record does not establish any such effect in this case. There is no evidence in the record that Plaintiff has been intimidated in any way as a result of the Article. In fact, Plaintiff testified that the Article did not cause her to refrain from taking any legal action. Camer Dep., CP Subfile 40, Attch. A, p. 102. Nor is there any evidence in the record showing that Plaintiff has been denied access to the courts.

Plaintiff's essential argument is that she should be immune to criticism of her legal actions, because she has a

right to seek redress in the courts. Her argument turns the First Amendment on its head. It does not advance freedom of speech, but rather tends to limit or destroy the freedoms enjoyed by all citizens.

Plaintiff has also suggested that an unrelated lawsuit was "not improbabl[y]" dismissed as a result of the Article. Petition at 28-29. She concedes there is no proof of that allegation. The appellate court correctly concluded that Plaintiff failed to introduce clear and convincing evidence of any damages resulting from the Article.

CONCLUSION

For these several reasons, Plaintiff Camer's petition for certiorari should be denied.

RESPECTFULLY SUBMITTED this Eighth day of May, 1987.

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Appendix A

Seattle Post-Intelligencer
June 20, 1982

'Nuisance' suits clog
the courts

By Susan Goldberg
P-I Reporter

1. The cases have become something of a joke.
2. There was the man who sued the state, claiming the sales tax held him in involuntary servitude.
3. After losing the case, he sued the judge and the attorney general. After losing that case, he sued the judge, attorney general and appellate court judges. And after losing that case, he sued the judge, attorney general, appellate court judges and all nine state supreme court justices.
4. But the punch line, say attorneys, isn't funny.
5. "What these people do is hammer us with absolute nonsense you have to respond to, and it sucks away a very precious commodity to us and that commodity is time," says Mike Redman, executive secretary of the Washington Associates of Prosecuting Attorneys.

Constant litigants

6. Redman's complaints are echoed in the legal libraries and

law offices of the state attorne general, city hall and Seattle School District, where the constant battle against "nuisance suers," as they are known, costs the government agencies--and the taxpayers--millions each year.

7. The constant litigants are sometimes just angry citizens. Many however, are prisoners, buc ing for a way to get out. Sometimes, they succeed and in at least one case, the result, says Redman, is no laughing matter.

8. Samuel Pietro Evans ran awa from the Tri-Cities Work and Training Release Center on July 1974. It says so, in Evans word right on the statement he signed when pleading guilty to the esca charge.

9. "I escaped from the Pasco work release facility on July 5, 1974."

10. But that apparently doesn't say so in the right technical language, according to the State Court of Appeals in Spokane. In April, the court ruled in a 2-1 decision that the three-time con victed felon was entitled to a n trial on the escape charge.

'There's hope'

11. For Washington's 39 county prosecutors, the name Samuel Pietro Evans is quickly becoming infamous.

12. "What the Evans decision ha said to everyone who doesn't thi Walla Walla is the greatest plac

to spend the summer is, 'There's hope,'" Redman says.

13. "They're going to write the Court of Appeals and say, 'Guys, you don't know me, but I got a problem like Samuel Pietro Evans and think I ought to have a new trial.'"

14. Redman predicts the result will be a great increase in nuisance suits--personal restraint petitions filed with the Court of Appeals or the State Supreme Court by prisoners who, like Evans, pleaded guilty to the crimes that landed them behind bars.

'Constitutional crazies'

15. The potential is formidable: about 85 percent of the state's 5,200 prisoners pleaded guilty, he says.

16. But Redman has other reasons to worry about nuisance suits, and not just those filed by prisoners.

17. There are also the suits brought by "constitutional crazies", he says. Those are the people who think "fluoridated water is a communist plot to enslave us" or insist that the only legal tender is gold and battle in court over the use of paper money.

18. Then there are suits by those "who are just not operating with a level bubble," Redman says. Those are the people who keep overworked county prosecutors busy responding to charges he says are preposterous on their face.

19. In all, Redman estimates t state's county prosecutors spen about $750,000 each year, not counting court costs and outsid attorneys' fees, to fend off th myriad of frivolous charges brought by constant litigants.

20. Similar charges are levele correctly or not, at Seattle ci zens like Dorothy Camer and Margaret Coughlin, who together have filed nearly two dozen separate legal actions against state, city and Seattle School District.

21. Both women often represent themselves, which is called a " se" case. They prepare their o legal briefs and arguments with an attorney.

22. Camer, a West Seattle moth has taken the district to court six times in the last three years--not counting numerous appeals and reconsiderations--o a variety of educational issues behalf of her children, Pepi an Kirk. In addition, she has fil three Office for Civil Rights complaints against the district and one against the state.

23. She has never won a case.

Camer would not talk to th Post-Intelligencer. She said s was "too busy" preparing a lega brief asking for a reconsiderat in a case she recently lost.

24. Margaret Coughlin, a Magno resident, is also a familiar fa in the courts and to attorneys the school district and city.

25. Coughlin, says attorney Di Mann who says he has "spent man

many hours" defending the city against her suits, has been taking the city to court "non-stop" since 1974, mostly about zoning disputes and what she claims are inadequate environmental impact statements prepared by the city.

26. "Her file is kept in giant cardboard boxes," Mann says.

27. In addition, Coughlin brought the school district to court three times in 1981 about environmental impact statements she says are faulty. Two of those cases, says Dave Burman, who is representing the district against Coughlin, are still pending.

28. Like Camer, Coughlin said that she, too, could not talk to the P-I because she is busy working on an appeal for a case she recently lost against the city.

'Thousands of dollars'

29. Attorneys for the city and district are hesitant to estimate how much constant litigators cost their agencies--and the taxpayers.

30. "It is well into the thousands of dollars," is the only guess Mann will make about the Coughlin cases alone.

31. Michael Hoge, attorney for the school district, puts it this way, "If you count the outside attorneys' fees, my own time and that of others in the office, over the past two or three years it would not be an exaggeration to say that we've spent about $20,000 a year on these cases."

32. The three Coughlin cases alone have so far cost the district $8,000 in legal fees racked up by Burman, who was brought in from a private firm t handle the case.

33. The district's legal office budget was about $500,000 this year.

34. "We've got dozens of those people," says Malachy Murphy, deputy state attorney general.

35. Last month, he says, the state had 96 pending civil right violation cases, most of which were brought by prisoners who ha previously filed many such motio

36. Moreover, he says his offic fights over 100 "pro se" cases each year brought by citizens.

37. "Most of these cases are no legitimate," Murphy says. "The claims are so off the wall they have to represent themselves."

38. Although the people respons ble for the constant suits range from convicted felons to ordinar folks with a beef about govern- ment, Murphy says they all have one thing in common.

39. "A characteristic of these people is that they have the absolute inability to accept a 'no' from government or a judge, he says.

40. He also says the number of "pro se" suits against public agencies are a "touchstone, an indicator, of the level of citiz frustration with the government all levels."

41. Apparently, at the state level, frustration is running

pretty high. But Murphy won't "hazard a guess" at how much the state spends fighting such cases.

42. Constant litigators may be more of a nuisance to attorneys and an expense to taxpayers, however.

43. Murphy says they have had a "significant impact" on the increasing caseload that has clogged the state and federal court systems in recent years.

44. The overcrowded courts haven't escaped the notice of state lawmakers, either. Last year, the Senate passed three measures, including a proposed constitutional amendment, aimed at easing congestion in the courts.

45. The constitutional amendment, which was voted down in the 1981 November election, was specifically aimed at the county Superior Courts, many of which report huge backlogs of cases and lengthy delays in bringing cases to trial.

46. The overcrowding has extended to the State Supreme Court, where 863 filings were reported last year. That represents an increase of more than 12 percent over 1980 and the highest number of filings since 1969, when the Court of Appeals was established to assume intermediate responsibility for appeals cases.

47. In the Court of Appeals, nearly 2,800 new cases were filed for review. That's about 1,000 more cases filed for review in 1976.

48. No figures are available from the courts about how many of their

cases are filed by the same people, time and time again.

49. Part of the problem, says an attorney familiar with constant litigation, is that in Washington, the losing party in a lawsuit does not necessarily have to pay the attorneys' fees of the winning side. In some states, reimbursement is automatic.

Remedies few

50. It is particularly difficult for an arm of Washington government to recover fees from a citizen who has brought a suit, no matter how often or how frivolous, he says.

51. The result is that citizens representing themselves have little to lose by taking government agencies to court.

52. "There isn't any set remedy for these kind of things," he says. "I suspect that public agencies, to a large part, just have to live with these things."

53. Remedies are, in fact, few and far between.

54. Clearly, says Murphy, the cases cannot be ignored. The consequences of brushing off constant litigants can be too great.

55. "You've got to take a look at every one of them, because if you ignored them, some day you'd wind up paying some huge judgment to these folks," he says.

'Stretching the point'

56. Nor do legal remedies--namely bringing a cease and desist order or similar injunctions against the litigants--provide easy solutions.

57. For the city to bring such an order against Coughlin, for example, it would have to "prove she has filed a series of frivolous cases," Mann says. "That would be really stretching the point."

58. At the school district, where officials are faced with budget cuts of $16 million for next year--and possibly $10 million more if Gov. John Spellman makes 8.2 percent cuts for all state agencies--Hoge tells a similar story.

59. The district hasn't tried to stop Camer, he says, because "the standards courts have set down for denying citizen access to the courts are, for good reasons, extremely stringent."

60. "Only in the most aggravated cases will a person be denied from pursuing legal remedies for grievances, whether real or imagined."

'Hell of a war'

61. Despite their annoyance with constant litigants, most attorneys for government agencies, including those who feel the most maligned by what they see as abuse of the court system, agree with Hoge. In principle, anyway.

62. "We fought a hell of war to get a government to meet our

needs," Redman says, "and one of the things we fought for was access to the courts, for everyone."

63. "The problem is that our crime rate is going up and we're having to spend time on nuisance suits," Redman says of suits brought by prisoners.

64. "They are time-consuming, expensive and frustrating for me and others involved," Hoge says, "but that's the price we pay for a legal system where each citizen has the right to be heard in the courts."

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Appendix B

Plaintiffs' First Interrogatories to Defendant Seattle Post-Intelligencer and Answers Thereto, at 2.

2. Identify any published legal or ethical guidelines or standards used by employees of the Seattle Post-Intelligencer or recommended for the use of such employees of the Seattle Post-Intelligencer.

Answer:

The following published materials are frequently used by employees of the Post-Intelligencer and their use is recommended by management:

Bench-Bar-Press Principles and Guidelines; Associated Press Style Book and Libel Manual; The Word: An AP Guide to Good News Writing

Other publications may be consulted from time to time by employees of the Post-Intelligencer.

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Appendix C

THE HEARST CORPORATION
(Listing of Divisions/Subsidiaries
as of December 31, 1986)

Divisions

Home Office	WBAL (AM-FM-TV)
Arbor House Publishing Co.	WDTN (TV)
Avon Books	WISN (AM-FM-TV)
Baltimore News American	WTAE (AM-FM-TV)
Business Magazines Publishing	WCVB (TV)
Cal Graphics	
Capital Newspapers	
Down East Timberlands	
Electronic Publishing Services	
Hearst Books	
Hearst Books/Business Publishing Group Administrative	
Hearst Cable Communications	
Hearst Enterprises	
Hearst Magazines	
Hearst Metrotone News	

Hearst Realties

Hearst Trade Books Administrative

International Studio art

King Features Syndicate

KMBC (TV)

Los Angeles Herald-Examiner

Puck-The Comic Weekly

San Antonio Light

San Francisco Examiner

San Francisco Realties

Seattle Post-Intelligencer

Sunical Land & Livestock

Subsidiaries

Beaumont Enterprise Company, Inc.

**Capital Newspapers Public Benefit Fund Inc.

Clearwater Newspapers, Inc.

Communications Data Services, Inc.

Cowles Syndicate, inc.

Eastern News Distributors, Inc.

Edwardsville Publishing Company, Inc

Features Music Corp.

*Good Housekeeping, Inc.

Hearst Advertising Service Inc.

Hearst Broadcasting Productions, Inc.

Hearst Business Communications, Inc.

Hearst Business Media Corporation

Hearst Cablevision of California, Inc.

Hearst Canada Inc.

*Hearst Canadian, Ltd.

Hearst Community Newspapers, Inc.

Hearst Florida Newspapers, Inc.

Hearst Professional Magazines, Inc.

Hearst Radio, Inc.

*Hearst Realty Development Co., Inc.

Hesco Supply Company, Inc.

Hillsborough Community Publications, Inc.

Huron Publishing Company, Inc.

King Features Entertainment, Inc.

*KFS Music, Inc.

*King Features Services, Inc.

*King Features Syndicate, Inc.

King Features Television Productions, Inc.

*La Cuesta Encantada Corporation

Laredo Times Company, Inc.

**Los Angeles Herald Examiner Benefit Fund

Midland Newspapers, Inc.

Midland Publishing Company, Inc.

*Mirror Holding Company

North American Syndicate, Inc.

*Old Colony News Corporation

*Omega Publishing Corporation

Periodical Publisher's Service Bureau, Inc.

Plainview Newspapers, Inc.

Reader Mail Inc.

**San Francisco Examiner Charities, Inc.

San Francisco Newspaper Printing Company, Inc.

*San Simeon Realty & Development Corporation

*Science Digest, Inc.

*Telenews Film Corporation

*That Cosmopolitan Girl Library, Inc.

The National Magazine Company Limited

252 - 254 West 55th Street
Corporation

William Morrow and Company, Inc.

Wilmor Warehouse and Shipping Co.,
Inc.

*Inactive
**Nonprofit corporations

Appendix D

THE SUPREME COURT OF WASHINGTON

DOROTHY CAMER and MARGARET COUGHLIN, Petitioners,	)	NO. 53252-4 Court of Appeals No. 15814-7-I
v.	)	ORDER GRANTING MOTION FOR EXTENSION OF TIME TO FILE PETITION FOR REVIEW AND DENYING PETITION FOR REVIEW ON THE MERITS
SEATTLE POST-INTELLIGENCER and SUSAN GOLDBERG, Respondents.	)	

This matter came on before the Court on its January 6, 1987, Motion Calendar on Petitioner's Motion for Extension of Time to File Petition for Review. The Court having considered the Motion and the files herein;

Now, therefore, it is hereby

ORDERED:

That Petitioner's Motion for Extension of Time to File Petition for Review is granted and the Petition for Review is denied on the merits.

DATED at Olympia, Washington this 6th day of January, 1987.

James R. Dolliver
CHIEF JUSTICE

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